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No. OFFICE OF THE CLERK

In the
Supreme Court of the United States

DENISE MARIE HENDERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. The Fourth Amendment of the United States Constitution protects citizens from unreasonable search and seizure and requires that warrants describe items to be seized with particularity. The question presented is, where a magistrate ruled that the search warrant at issue was overbroad, did the Court of Appeals for the Eighth Circuit correctly determine that the "good faith exception" to the warrant requirement (*U.S. v. Leon*, 468 U.S. 897 (1984)) applies to the seizure of all of Petitioner's computers and hard drives when the warrant failed to specify what items were to be found within such devices? This presents a compelling question on a matter of exceptional importance under the federal constitution because there is a split among the Eighth and Tenth Circuits (*U.S. v. Leary*, 846 F.2d 592 (10th Cir. 1988)) as to the interpretation and application of the "good faith exception" to the warrant requirement.

2. The doctrine of primary jurisdiction requires that, in cases where an administrative regulation is at issue, courts defer to the expertise of an administrative agency. *U.S. v. Western Pac. R. Co.*, 352 U.S. 59, 63 (1956). The question presented is, in light of Petitioner being convicted of making false statements and omissions in order to obtain benefits to which she was not *entitled* in connection with her application for Social Security Disability Insurance ("SSDI") benefits, should the district court have deferred to the Social Security Administration's ("SSA") pending determination of eligibility before permitting the criminal trial to proceed? This is a compelling question of exceptional importance because, without clear guidance on the issue of primary jurisdiction as it relates to the SSA, persons who are ultimately found to be eligible for SSDI benefits could be placed at risk of criminal prosecution prior to an administrative finding of entitlement to benefits.

PARTIES TO THE PROCEEDINGS

The parties to this proceeding are as follows:

1. Denise Marie Henderson, Petitioner
2. United States of America, Respondent

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Denise Marie Henderson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., A-1) is reported at 416 F.3d 686. Because the district court criminal proceedings resulted in a jury verdict, there are no reported or published lower court opinions. However, the relevant opinions are included in the Appendix. *See* Judgment in a Criminal Case, *United States of America v. Denise Marie Henderson*, Criminal File No. 03-437 (DSD/JSM) (D. Minn. 2004) (App., A-14); Report and Recommendation of Magistrate, *United States of America v. Denise Marie Henderson*, Criminal File No. 03-437 (DSD/JSM) (D. Minn. 2004) (App., A-23); Order of District Court dated July 19, 2004, *United States of America v. Denise Marie Henderson*, Criminal File No. 03-437 (DSD/JSM) (D. Minn. 2004) (App., A-78).

GROUND FOR INVOKING JURISDICTION OF THE U.S. SUPREME COURT

On August 1, 2005, Eighth Circuit Court of Appeals entered judgment affirming the district court's conviction of Petitioner Denise M. Henderson. (App., A-13). On September 19, 2005, the Court of Appeals denied Petitioner's petition for rehearing. (App., A-92). Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

This case involves the conviction of Petitioner Denise Marie Henderson ("Henderson") on the basis of, *inter alia*, computer-based evidence that was seized from her residence pursuant to a search warrant.

On February 25, 2003, federal agents executed a search warrant on Petitioner Henderson's residence, seizing computer hard drives and disks. Item 14 of the Federal Search Warrant permitted officers to seize: "Records which appear on any and all computers which are located in the house, to include the hard drive and any disks which are located in the house." (App., A-83 to A-85 at ¶ 14).

Prior to trial, Henderson moved to suppress all items seized pursuant to Item 14. On June 30, 2004, Magistrate Jamie S. Mayeron issued a Report and Recommendation finding the warrant used to obtain these computer records

overbroad. (App., A-50 to A-55). Nonetheless, Magistrate Mayeron held that the warrant's deficiency as to specificity was cured by the "good faith" exception set forth in *United States v. Leon*, 468 U.S. 897, 923-24, 104 S.Ct. 3405, 3421 (1984). The computer-based evidence used to convict Petitioner Henderson related to businesses owned and operated by Henderson's husband, e-mail messages regarding beauty pageants, and an e-mail in which Henderson jokingly likened herself to the "Energizer Bunny." These items of evidence were presented to the jury by the prosecution in the course of trial, in order to show that Henderson engaged in substantial gainful activity and was capable of engaging in substantial gainful activity while collecting SSDI benefits.

On August 1, 2005, the Eighth Circuit Court of Appeals entered judgment affirming the district court's conviction, in part on evidence seized pursuant to the warrant. *U.S. v. Henderson*, 416 F.3d 686 (8th Cir. 2005). In upholding the district court's denial of Henderson's motion to suppress computer-based evidence seized pursuant to an overbroad search warrant, the Court of Appeals held that:

The warrant stated that police could search, "Records which appear on any and all computers which are located in the house, to include the hard drive and any disks which are located in the house." After finding the warrant overly broad, the district court relied on the good-faith exception in *United States v. Leon*, 468 U.S. 897, 923-24, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). The court found that the police had probable cause for the search, there was no evidence of bad-faith or a biased magistrate, and the officer who requested the warrant was the same officer who executed it. Finally, in the context of the rest of the warrant, the officer had a reasonable belief that warrant was limited to the seizure of

computer files and drives related to Henderson's business activities, finances and disability. See *United States v. Saunders*, 957 F.2d 1488, 1491 (8th Cir. 1992). The district court's findings are not clearly erroneous.

Henderson, 416 F.3d at 695 (emphasis added). On September 19, 2005, the court of appeals denied Henderson's petition for rehearing. (App., A-92).

The Tenth Circuit Court of Appeals has interpreted the "good faith" exception of *Leon* more narrowly, refusing to permit executing officer wide latitude in seizing items pursuant to overbroad warrants. See *U.S. v. Leary*, 846 F.2d 592 (10th Cir. 1988); *Voss v. Bergsgaard*, 774 F.2d 402 (10th Cir. 1985).

Because there is a conflict between the Eighth Circuit and Tenth Circuit as to the interpretation and application of the *Leon* "good faith" exception to the warrant requirement, review on certiorari is appropriate.

The criminal prosecution of Henderson by the Government took place while determination of her eligibility for SSDI benefits was still pending. Following a car accident, Henderson had been declared eligible for SSDI on February 24, 1999. On August 19, 2004, the SSA re-opened the case *sua sponte* and reversed the initial determination of eligibility. Henderson appealed that ruling. With the appeal pending, there was no final determination of Henderson's eligibility by the SSA when, on December 16, 2003, the government initiated the criminal prosecution of Henderson.

The doctrine of primary jurisdiction serves to "promot[e] the proper relationships between the courts and administrative agencies charged with regulatory duties." *Western Pac. R. Co.*, 352 U.S. at 63. There is currently no guidance from this Court as to the relationship between the SSA, which is charged with determination of eligibility for

SSDI benefits, and the Government as criminal prosecutor of social security fraud. The Government, in this case, used criminal prosecution to collaterally attack on administrative ruling of SSA. In doing so, the Government undermined the uniform application of SSDI determinations, and constitutes a compelling reason for review on certiorari.

ARGUMENT

I. THE CONFLICTING INTERPRETATIONS OF THE "GOOD FAITH" EXCEPTION TO THE WARRANT REQUIREMENT BETWEEN THE EIGHTH CIRCUIT AND THE TENTH CIRCUIT PRESENT A COMPELLING REASON FOR REVIEW ON CERTIORARI OF THIS MATTER OF EXCEPTIONAL CONSTITUTIONAL IMPORTANCE.

A. Evidence Seized Pursuant to a Warrant Later Found Invalid May Be Admitted Only Under Limited Circumstances.

The Fourth Amendment to the U.S. Constitution requires that items seized be described in a warrant with specificity. *See, e.g., Dalia v. U.S.*, 441 U.S. 238, 256 (1979) (citing *Stanford v. Texas*, 379 U.S. 476, 485 (1965)). Failure to do so requires suppression at trial of evidence so seized. *Illinois v. Krull*, 480 U.S. 340, 347 (1987).

The Supreme Court first crafted the "good faith" exception to the requirement of a constitutionally valid warrant in *U.S. v. Leon*, 468 U.S. 897 (1984). The exception provides for the admission of evidence obtained pursuant to a warrant later found *invalid* if the officer who executed the warrant objectively relied on the sufficiency of the search warrant. *Id.* at 922. The *Leon* Court, however, also set out limits to that exception. Among them, the Court warned that "a warrant may be so facially deficient – *i.e.*, in failing to particularize [...] the things to be seized – that the executing officers cannot reasonably presume it to be valid." *Id.* at 923.